

1
2
3
4
5
6
7
8
9
10
11
12
13 UNITED STATES DISTRICT COURT
14 WESTERN DISTRICT OF WASHINGTON
15 AT TACOMA

15 UNITED STATES OF AMERICA,
16 STATE OF WASHINGTON,
17 PUYALLUP TRIBE OF INDIANS, and
18 MUCKLESHOOT INDIAN TRIBE,

18 Plaintiffs,

No.

19 v.

20 MURRAY PACIFIC CORPORATION, a
21 Washington Corporation, PAN PACIFIC
22 TRADING CORPORATION, a dissolved
23 Washington Corporation whose successor
24 is Murray Pacific Corporation,
25 BOARDMAN BROWN, and MARY
26 JANE ANDERSON,

24 Defendants.

COMPLAINT

25 Plaintiffs United States of America, by authority of the Attorney General, on behalf of the
26 National Oceanic and Atmospheric Administration of the Department of Commerce and the
27 Department of the Interior; State of Washington through the Washington Department of Ecology;
28

COMPLAINT - 1

*U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
(206) 526-6616*

1 Puyallup Tribe of Indians; and Muckleshoot Indian Tribe, allege as follows:

2 I. GENERAL ALLEGATIONS

3 1. This is a civil action under section 107(a) of the Comprehensive Environmental
4 Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a); section 311 of the
5 Clean Water Act (CWA), 33 U.S.C. § 1321; section 1002(b) of the Oil Pollution Act (OPA), 33
6 U.S.C. § 2702(b); and the Model Toxics Control Act (MTCA), RCW 70.105D, for damages for
7 injury to, destruction of, or loss of natural resources resulting from the release of hazardous
8 substances and discharges of oil into Commencement Bay in Tacoma, Washington.

9 II. JURISDICTION AND VENUE

10 2. This Court has jurisdiction over this case pursuant to sections 107 and 113(b) of
11 CERCLA, 42 U.S.C. §§ 9607 and 9613(b); section 311(n) of the CWA, 33 U.S.C. § 1321(n);
12 section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. §§ 1331, 1345 and 1367(a).

13 3. Venue is proper in this district pursuant to section 113(b) of CERCLA, 42 U.S.C.
14 § 9613(b); section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. § 1391(b) and (c).

15 III. THE SITE

16 4. Commencement Bay is an embayment in southern Puget Sound located in and
17 adjacent to Tacoma, Washington.

18 5. The "Commencement Bay Environment" as used in this Complaint means the
19 waters of Commencement Bay, including the shoreline, intertidal areas, tributaries, drainage
20 areas, estuaries and bottom sediments, lying south of a line drawn from Point Defiance to Dash
21 Point, and including the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway,
22 St. Paul Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee
23 Waterway, Sitcum Waterway, Blair Waterway and Hylebos Waterway. This area includes but is
24 not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or
25 amended by the U.S. Environmental Protection Agency, and areas affected by releases of
26 hazardous substances within the Commencement Bay Nearshore/Tideflats Superfund Site.

27 6. Commencement Bay is contaminated with a variety of hazardous substances,
28

1 including antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-
2 phthalate, hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons and
3 polychlorinated biphenyls (PCBs).

4 7. The Hylebos Waterway and Commencement Bay are navigable waters within the
5 meaning of section 1001(21) of OPA, 33 U.S.C. § 2701(21), and section 502(7) of the CWA, 33
6 U.S.C. § 1362(7).

7 IV. PLAINTIFFS

8 8. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
9 OPA, 33 U.S.C. § 2706, section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), and 40 C.F.R. §
10 300.600, the United States is trustee for certain natural resources in the Hylebos Waterway and
11 the Commencement Bay Environment.

12 9. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
13 OPA, 33 U.S.C. § 2706, section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), 40 C.F.R. §
14 300.605, Ch. 43.21A RCW, Ch. 70.105D RCW, and Ch. 90.48 RCW, the State of Washington is
15 trustee for certain natural resources in the Hylebos Waterway and the Commencement Bay
16 Environment.

17 10. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
18 OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Puyallup Tribe of Indians is trustee for
19 certain natural resources in the Hylebos Waterway and the Commencement Bay Environment

20 11. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
21 OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Muckleshoot Indian Tribe is trustee for
22 certain natural resources in the Hylebos Waterway and the Commencement Bay Environment.

23 V. DEFENDANTS

24 12. Defendant Murray Pacific Corporation is a corporation organized under the laws
25 of the State of Washington.

26 13. Murray Pacific Corporation does business in this district.

27 14. Pan Pacific Corporation is a dissolved corporation, organized under the laws of
28

1 Washington, whose successor in interest is Murray Pacific Corporation.

2 15. At times relevant to this Complaint, Pan Pacific Corporation did business in this
3 district.

4 16. Boardman Brown is a resident of Pasadena, California.

5 17. Mary Jane Anderson is a resident of Seattle, Washington.

6 18. Defendants Pan Pacific Corporation and Murray Pacific Corporation owned or
7 operated a log yard on the Hylebos Waterway within the Commencement Bay Environment.

8 19. Defendants Boardman Brown and Mary Jane Anderson owned property as tenants
9 in common on or near the Hylebos Waterway which they leased to Murray Pacific Corporation
10 for operations at the log yard.

11 20. During the time that Pan Pacific Corporation and Murray Pacific owned or
12 operated the log yard, there were discharges and releases of hazardous substances at the yard into
13 the Hylebos Waterway and the Commencement Bay Environment.

14 21. During the time that Pan Pacific Corporation and Murray Pacific owned or
15 operated the log yard, there were discharges of oil at the yard into the Hylebos Waterway and the
16 Commencement Bay Environment.

17 22. There were discharges and releases of hazardous substances into the Hylebos
18 Waterway and the Commencement Bay Environment at the property leased by Boardman Brown
19 and Mary Jane Anderson to Murray Pacific Corporation.

20 23. There were discharges of oil into the Hylebos Waterway at the property leased by
21 Boardman Brown and Mary Jane Anderson to Murray Pacific Corporation.

22 VII. FIRST CLAIM FOR RELIEF

23 24. Plaintiffs reallege paragraphs 1 through 23.

24 25. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part, as
25 follows:

26 Notwithstanding any other provision or rule of law, and subject
27 only to the defenses set forth in subsection (b) of this section -

28 (1) the owner and operator of a vessel or a facility,

1 (2) any person who at the time of disposal of any hazardous
2 substance owned or operated any facility at which such hazardous
substances were disposed of,

3 (3) any person who by contract, agreement, or otherwise arranged
4 for disposal or treatment, or arranged with a transporter for
5 transport for disposal or treatment, of hazardous substances owned
6 or possessed by such person, by any other party or entity, at any
7 facility or incineration vessel owned or operated by another party
8 or entity and containing such hazardous substances, and

9 (4) any person who accepts or accepted any hazardous substances
10 for transport to disposal or treatment facilities, incineration vessels
11 or sites selected by such person, from which there is a release, or a
12 threatened release which causes the incurrence of response costs,
13 of a hazardous substance, shall be liable for

14 * * *

15 (C) damages for injury to, destruction of, or loss of natural resources,
16 including the reasonable costs of assessing such injury, destruction, or loss
17 resulting from such a release;

18 * * *

19 26. Materials disposed of and released in the Commencement Bay Environment by
20 defendants include hazardous substances within the meaning of section 101(14) of CERCLA, 42
21 U.S.C. § 9601(14).

22 27. The log yard owned and operated by Murray Pacific Corporation and Pan Pacific
23 Corporation is a facility within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24 28. The Commencement Bay Environment is a facility within the meaning of section
25 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26 29. Releases or threatened releases of hazardous substances have occurred in the
27 Commencement Bay Environment within the meaning of sections 101(22) of CERCLA, 42
28 U.S.C. § 9601(22). The releases of hazardous substances in the Commencement Bay
Environment at facilities owned or operated by defendants have resulted in injury to, destruction
of, or loss of natural resources within the trusteeship of one or more of the Plaintiffs.

30. Defendants are persons within the meaning of section 107 of CERCLA, 42 U.S.C.
§ 9607.

31. Defendant Murray Pacific Corporation is a successor to defendant Pan Pacific Corporation and is responsible for the liability of Pan Pacific Corporation under CERCLA.

32. Defendants are liable to Plaintiffs for natural resource damages resulting from releases of hazardous substances pursuant to section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

VIII. SECOND CLAIM FOR RELIEF

33. Plaintiffs reallege paragraphs 1 through 32.

34. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides in pertinent part, as follows:

Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) of this section that result from such incident.

35. Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), provides in pertinent part, as follows:

Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian Tribe trustee, or a foreign trustee.

36. The log yard owned or operated by Murray Pacific Corporation and Pan Pacific Corporation is a facility within the meaning of sections 1001(9) and 1002 of OPA, 33 U.S.C. §§ 2701(9) and 2702.

37. Defendants are responsible parties within the meaning of section 1001(32) of OPA, 33 U.S.C. § 2701(32).

38. The discharge of oil into the Hylebos Waterway or adjoining shorelines at facilities owned or operated by defendants has resulted in injury to, destruction of, or loss of natural resources within the trusteeship of one or more of the Plaintiffs.

39. Defendants are liable to Plaintiffs for natural resource damages resulting from discharges of oil pursuant to section 1001 of OPA, 33 U.S.C. § 2701.

IX. THIRD CLAIM FOR RELIEF

40. Plaintiffs reallege paragraphs 1 through 39.

41. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), provides in pertinent part, as follows:

The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone . . . or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States . . . in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited

42. Section 311(f)(2) of the CWA, 33 U.S.C. § 1321(f)(2), provides in pertinent part, as follows:

Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United State Government, or (D) an act or omission of a third party without regard to whether an such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government

43. Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4), provides in pertinent part, as follows:

The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

44. The log yard owned or operated by Murray Pacific Corporation and Pan Pacific Corporation is an onshore facility within the meaning of sections 311(f)(1) of the CWA, 33 U.S.C. § 1321(f)(1).

45. There have been discharges of oil or hazardous substances in harmful quantities into the Hylebos Waterway and adjoining shorelines from the log yard owned or operated by defendants.

46. Discharges of oil or hazardous substances from the log yard into the Hylebos

1 Waterway or adjoining shorelines have affected, damaged or destroyed natural resources
2 belonging to, appertaining to, or under the exclusive management authority of the United States.

3 47. Defendants are liable to the United States and State of Washington for natural
4 resource damages resulting from discharges of oil or hazardous substances into the Hylebos
5 Waterway or adjoining shorelines pursuant to section 311(f) of the CWA, 33 U.S.C. § 1321(f).

6 X. FOURTH CLAIM FOR RELIEF

7 48. Plaintiffs reallege paragraphs 1 through 47.

8 49. MTCA, Chapter 70.105D.040 RCW, provides in pertinent part as follows:

9 (1) Except as provided in subsection (3) of this section, the following persons are liable
10 with respect to a facility:

11 (a) The owner or operator of the facility;

12 (b) Any person who owned or operated the facility at the time of disposal or
release of the hazardous substances;

13 (c) Any person who owned or possessed a hazardous substance and who by
14 contract, agreement, or otherwise arranged for disposal or treatment of the hazardous
15 substance at the facility, or arranged with a transporter for transport for disposal or
treatment of the hazardous substances at the facility, or otherwise generated hazardous
wastes disposed of or treated at the facility;

16 (d) Any person (i) who accepts or accepted any hazardous substance for transport
17 to a disposal, treatment or other facility selected by such person, from which there is a
18 release or a threatened release for which remedial action is required, unless such facility,
at the time of disposal or treatment, could legally receive such substance; or (ii) who
19 accepts a hazardous substance for transport to such a facility and has reasonable grounds
to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

20 (e) Any person who both sells a hazardous substance and is responsible for written
21 instructions for its use if (i) the substance is used according to the instructions and (ii) the
22 use constitutes a release for which remedial action is required at the facility.

23 (2) Each person who is liable under this section is strictly liable, jointly and severally, for
24 . . . all natural resource damages resulting from the releases or threatened releases of
25 hazardous substances.

26 50. Materials disposed of and released in the Commencement Bay Environment by
27 defendants include hazardous substances within the meaning of Chapter 70.105D.020(6)(c)
28 RCW.

51. The log yard owned and operated by Murray Pacific Corporation and Pan Pacific
Corporation is a facility within the meaning of Chapter 70.105D.020(4).

1 52. The Commencement Bay Environment is a facility within the meaning of Chapter
2 70.105D.020(4).

3 53. Releases or threatened releases of hazardous substances have occurred in the
4 Commencement Bay Environment within the meaning of Chapter 70.105D.020 and Chapter
5 70.105D.040.

6 54. The natural resources that have been and continue to be injured, destroyed, or lost
7 by the release of hazardous substances by Defendants include fish, shellfish, invertebrates, birds,
8 marine sediments, and other such natural resources.

9 55. The State of Washington has incurred and continues to incur response costs
10 related to the assessment of injury to natural resources caused by the releases of hazardous
11 substances by Defendant.

12 56. Pursuant to Rev. Code Wash. Chapter 70.105D.040(2), Defendants are jointly and
13 severally liable to the State of Washington for all damages to natural resources in the
14 Commencement Bay Environment, resulting from the release of hazardous substances at or from
15 Defendants' facilities.

16 XI. REQUEST FOR RELIEF

17 WHEREFORE, Plaintiff requests that this Court enter judgment against
18 Defendants:

19 (1) For damages for injury to natural resources resulting from the discharges or releases
20 of hazardous substances in the Hylebos Waterway and Commencement Bay Environment,
21 including the cost of assessing such damages; and

22 (2) Awarding Plaintiffs such other and further relief as this Court may deem appropriate.

23 Dated:
24
25
26
27
28

1 UNITED STATES OF AMERICA

2 KELLY A. JOHNSON
3 Acting Assistant Attorney General
4 U.S. Department of Justice
5 Environment and Natural Resources Division
6 Washington, D.C. 20530

7 JOHN McKAY
8 United States Attorney
9 Western District of Washington

10 JAMES L. NICOLL
11 U.S. Department of Justice
12 Environmental Enforcement Section
13 NOAA GC-DOJ DARC
14 7600 Sand Point Way NE
15 Seattle, Washington 98115